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## LOKE WAN YAT REALTY SDN BHD v. DATUK BANDAR KUALA LUMPUR

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD J
[ORIGINATING MOTION NO: 24-35-08-2014]
17 JULY 2015

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***LOCAL GOVERNMENT:*** *Rates – Assessment – Revision of annual value of premises – Whether rates fixed beyond rateable value – Appeal to High Court – Preliminary objections – Whether appeal filed within 14 days as prescribed in s. 145 of Local Government Act 1976 – Whether appeal properly brought before High Court*

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The appellant was the registered owner of a premises in Bangunan Loke Yew ('the premises'). On 19 November 2013, the appellant received a 'Notice of Revision of the Valuation List' dated 18 November 2013 from the respondent, proposing to revise the annual value of the premises to RM1,703,760 effective from 1 January 2014. On 2 July 2014, the appellant received a 'Notis Keputusan Bantahan Cukai Pintu Harta 2-8 Even Bangunan Loke Yew' dated 25 June 2014 from the respondent ('notis bantahan'), notifying the appellant that it had valued the said premises at RM1,485,360. *Vide* its letter dated 10 July 2014, the appellant requested the respondent to reconsider the annual value which the respondent imposed on the premises. On 16 July 2014, the respondent reduced the annual value of the premises from the sum of RM1,703,760 imposed earlier to RM1,470,000 ('the decision'). Hence, the appellant filed the present appeal pursuant to s. 145 of the Local Government Act 1976 ('LGA') against the decision of the respondent to the High Court *vide* an originating motion ('OM') ('encl. 1') and sought, amongst others, a declaration that the respondent in fixing the annual value of the premises had valued the premises beyond the rateable value. In raising two preliminary objections against the appellant's appeal, the respondent contended that (i) the appellant had not filed its appeal within the prescribed period of 14 days as stated in s. 145 of the LGA; and (ii) had not with the filing of the OM paid the sum assessed into the respondent. Thus, the respondent argued that the appeal was not properly brought before the present court. The appellant, on the other hand, submitted that as the appellant had received the 16 July 2014 letter, on 30 July 2014, and encl. 1 was filed on 13 August 2014, the appellant had complied with the provisions of s. 145 of the LGA and the appeal was properly brought before the present court. Therefore, the preliminary objections raised by the respondent were without any merits and ought to be overruled.

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**Held (striking out appeal with costs):**

**(1)** From the reading of the provisions of ss. 145 and 142 of the LGA, the decision under s. 145 of the LGA must arise from the enquiry held by the respondent under s. 142 of the LGA and premised on the objection raised at the enquiry. In this case, the 'notis bantahan' was the decision made pursuant to the enquiry under s. 142 of the LGA. (para 14)

**(2)** The appellant had not appealed against the decision dated 25 June 2014 but had instead appealed against the decision dated 16 July 2014 which the appellant received on 30 July 2014. The respondent's decision *vide* the letter dated 16 July 2014 relied on by the appellant was merely a reply to the appellant's letter dated 10 July 2014 and did not tantamount to a decision envisaged by s. 145 of the LGA. (para 16)

**(3)** In view of the aforesaid, encl. 1 was filed beyond the prescribed period stipulated in s. 145 of the LGA. Further, the payment of the rate was also not made within the prescribed timeline as stated in s. 145 of the LGA. There was clear non-compliance with the mandatory provisions of s. 145 of the LGA. This was fatal and had affected the jurisdiction of the present court to hear the appeal. (para 17)

**Case(s) referred to:**

*Datuk Bandar Kuala Lumpur v. Kuala Lumpur Golf and Country Club Bhd [2005] 3 CLJ 901 FC* ***(refd)***

*Wong Ngar v. Majlis Perbandaran Johor Bahru [1995] 1 CLJ 412 HC* ***(refd)***

*Yee Seng Rubber Co Sdn Bhd v. The Commissioner of the Federal Capital of Kuala Lumpur [1972] 1 LNS 177 HC* ***(refd)***

**Legislation referred to:**

Local Government Act 1976, ss. 142(1)(a), (b), (c), (d), (e), 144, 145(1), (2)

*For the appellant - Dhinesh Bhaskaran (Khor Meyven with him); M/s Shearn Delamore & Co*

*For the respondent - Romesh Abraham (Jason Gopal with him); M/s Shook Lin & Bok*

*Reported by Sandra Gabriel*

## JUDGMENT

**Asmabi Mohamad J:**

### Introduction

**[1]** This was an appeal pursuant to s. 145 of the Local Government Act 1976 against the decision of the respondent dated 16 July 2014, to revise the assessment rates imposed on the appellant.

**[2]** By this originating motion dated 13 August 2014 ("encl. 1") the appellant had sought, amongst others, the following reliefs:

A (i) a declaration that the respondent in fixing the annual value of the premises identified as Bangunan Loke Yew, No. 2-8 Even, Jalan Mahkamah Persekutuan, 50050 Kuala Lumpur ("the premises") at RM1,470.000 ("the decision") has valued the premises beyond the rateable value;

B (ii) that the decision be reversed or set aside;

(iii) that the annual value of the premises be reduced from RM1,470,000 to RM876,000;

(iv) consequently that the assessment sum payable for the premises be C reduced from RM131,400 to RM87,000 or such sum as this court deems fit;

(v) any reliefs as this court deems fit; and

(vi) costs.

D **[3]** Enclosure 1 was fixed for hearing before me on 16 March 2015. On 6 January 2015, learned counsel for the respondent had issued a notice to the learned counsel for the appellant to indicate to the said learned counsel of the appellant that the respondent would be raising two preliminary objections, the substance of which were as averred in the affidavit of the E respondent affirmed on 26 September 2014 and filed herein (see para. 4 of enclosure). The two objections were as follows:

(i) the appeal has been filed outside the mandatory time period prescribed under s. 145 of the Local Government Act 1976 ("Act 171") ("LGA"); and

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(ii) that the appellant has not paid the assessed sum within the mandatory period prescribed under s. 145 of the LGA.

**[4]** On 16 March 2015, I proceeded to hear the preliminary objections raised by the respondent and upon perusing the cause papers and the written G submissions filed by the respondent as well as the appellant and upon hearing oral submissions by both learned counsel, I accepted the preliminary objections raised by the respondent and struck out the appeal with costs. After hearing a short submission on costs I awarded costs of RM5,000 to the respondent.

H **Background Facts**

**[5]** The background facts leading to the appeal had been well illustrated by learned counsel for the appellant. I could not do anything better than to adopt the same herein with some modifications wherever necessary as follows:

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(i) the appellant is the registered owner of the premises;

(ii) the respondent is a body corporate established under the Federal Capital Act 1960 ("Act 190") and vested with all the powers under the Act, including to impose assessment rates for buildings within the territories of Kuala Lumpur and to exercise all powers pursuant to the LGA;

(iii) on 19 November 2013, the appellant had received a "notice of revision of the valuation list" dated 18 November 2013 from the respondent proposing to revise the annual value of the premises to RM1,703,760 effective from 1 January 2014 (see "exh. CHE1" of encl. 2);

(iv) on 2 July 2014, the appellant received a "Notis Keputusan Bantahan Cukai Pintu Harta 2-8 Even Bangunan Loke Yew, Jalan Mahkamah Persekutuan 50050 Kuala Lumpur" dated 25 June 2014 from the respondent ("notice"), notifying the appellant that it had valued the said premises at RM1,485,360 (see "exh. CHE6" of encl. 2);

(v) *vide* its letter dated 10 July 2014, the appellant had requested the respondent to reconsider the annual value which the respondent had imposed on the said premises (see "exh. CHE7" of encl. 2);

(vi) the respondent had reduced the annual value of the said premises from the sum of RM1,703,760 imposed earlier to RM1,470,000 (see "exh. CHE7" of encl. 2); and

(vii) on 13 August 2014, the originating motion was filed.

**The Law**

**[6]** The relevant law, which this court ought to examine, is s. 145 and s. 142 of the LGA:

(i) section 145 provides an avenue for appeal against the decision of the local authority with respect to any assessment rates imposed on a building within the limits of the territories of Kuala Lumpur. Section 145 states as follows:

> 145 Appeals.
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> (1) Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion.
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> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.
>
> (2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of receipt thereof.
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> (3) The local authority shall be the respondent in an appeal under this section.

A (4) Every such appeal shall be heard by the High Court whose decision on questions of fact shall be final and conclusive.

(5) From the decision of the High Court either party may appeal on questions of law to the Federal Court whose decision shall be final and conclusive.

B (6) In any appeal under subsection (5), the provisions of any written law for the time being in force relating to appeals in civil matters from the High Court in its appellate jurisdiction to the Federal Court shall apply.

(ii) section 142 of the LGA provides a mode for a person who is aggrieved C by the decision of the local authority with respect to matters stated in s. 142(1)(a) to (e) below to raise objections which shall be enquired into by the Committee Hearing the Objections. Section 142 provides as follows:

Section 142

D (1) Any person aggrieved on any of the following grounds:

(a) that any holding for which he is rateable is valued beyond its rateable value;

(b) that any holding valued is not rateable;

E (c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom;

(d) that any holding is valued below its rateable value; or

(e) that any holding or holdings which have been jointly or separately valued ought to be valued otherwise; F

may make objection in writing to the local authority at any time not less than fourteen (14) days before the time fixed for the revision of the Valuation List.

(2) All objections shall be enquired into and the person making G them shall at such enquiry be allowed an opportunity of being heard either in person or by authorised agent.

**Decisions**

**[7]** Before me, learned counsel for the respondent submitted that this H court was not seised with the jurisdiction to hear the appeal as this appeal was not properly placed before it due to non-compliance of certain mandatory provisions of s. 145 of the LGA. The respondent contended that the non-compliance was not merely a procedural issue but had affected the jurisdiction of this court to hear the appeal.

I **[8]** The appellant on the other hand submitted that the respondent's letter dated 16 July 2014 ought to be taken into consideration. As the appellant had received the 16 July 2014 letter, on 30 July 2014 and encl. 1 was filed on 13 August 2014, the appellant had complied with the provisions of s. 145

of the LGA and the appeal was properly brought before the court. Therefore, the preliminary objections raised by the respondent were without any merits and ought to be overruled by this court.

**[9]** The respondent further submitted that as the appellant had not filed its appeal within the prescribed period of 14 days as stated in s. 145 of the LGA and had not with the filing of the originating motion paid the sum assessed into the respondent, the appeal was not properly before this court.

**[10]** According to learned counsel for the respondent, the material date which the court ought to consider was the date the respondent issued its decision *vide* "notis keputusan bantahan cukai pintu" dated 25 June 2014 ("exh. CHE6" of encl. 2) and the appellant had admitted having received the same on 2 July 2014 (see para. 14 of encl. 2). Therefore, appellant ought to have filed its appeal on or by 16 July 2014, 14 days from the date of the decision.

**[11]** Learned counsel of the respondent submitted that the language of the notice dated 25 June 2014 was clear and unambiguous and had communicated to the appellant the decision of the respondent pertaining to the sum assessed with respect to the said premises upon an enquiry having been made pursuant to s. 142 of the LGA. The purpose of the enquiry was to enquire into the objections raised by the appellant pursuant to that section. In view of the above, the notice dated 25 June 2014 ought to be considered in calculating the timeline for filing of the appeal under s. 145 of the LGA. As the appellant had filed the appeal on 13 August 2014, it was out of time to file the appeal. The appellant ought to have applied for leave for extension of time to file the appeal. Learned counsel had urged this court to dismiss the appeal as it was filed out of time and no extension of time had been sought from this court by the appellant.

**[12]** Apart from the above, there was also non-compliance with the provision of sub-s. 145(1) of the LGA which requires the amount assessed to be paid into the respondent, with the filing of the originating motion, also within 14 days from the date of the decision. In the case before me, the payment of the assessed sum was only made on 8 August 2014, almost 37 days beyond the prescribed period (see "exh. CHE13" of encl. 2). Therefore there was a failure on the part of the appellant to effect payment of the assessment sum with the filing of originating motion pursuant to sub-s. 145 (1) of LGA.

**[13]** In resolving the issues at hand, this court has referred to the provision of sub-ss. 145(1) and (2) of the LGA which stipulate that a person who had made an objection prescribed under ss. 142 and 144 of the LGA, if dissatisfied with the decision of the local authority may appeal to the High Court by way of an originating motion. At the same time, he must also pay into the local authority the amount of the assessment rate appeal against.

**[14]** Therefore, from the reading of the provision of s. 145 and s. 142 of the LGA it would appear that the decision under s. 145 of the LGA must arise from the enquiry held by the respondent under s. 142 of the LGA and premised on the objection raised at the enquiry. In this case the "Notis Keputusan Bantahan Cukai Pintu Bagi Harta 2 - 8 Even Bgn Loke Yew, Jalan Mahkamah Persekutuan" dated 25 June 2014 was the decision made pursuant to the enquiry under s. 142 of LGA.

**[15]** This is reflected in the "Notis Keputusan Bantahan Cukai Pintu Bagi Harta 2 - 8 Even Bgn Loke Yew, Jalan Mahkamah Persekutuan" dated 25 June 2014 which made reference to the enquiry by the Committee Hearing the Objection pursuant to s. 142 of the LGA on the proposed annual value of RM1,703,760 at a proposed % of 10% making the proposed assessment figure of RM170,376. The proposed annual value objected to by the appellant had been enquired by the Committee Hearing the Objection and a decision had been made by the respondent that the annual value with respect to the said premises was reduced to RM1,485,360 at 10% of the said sum and the final assessment sum was RM148,536.

**[16]** The appellant had not appealed against the decision dated 25 June 2014 but had instead appealed against the decision dated 16 July 2014 which the appellant received on 30 July 2014. The 16 July 2014 letter which the appellant was relying on was issued subsequent to the 25 June 2014 letter and this was in response to the appellant's request for the respondent to reconsider the decision made pursuant to the 25 June 2014 letter (see exh. "CHE6", "CHE7" and "CHE8" of encl. 2 respectively). I am of the view that the respondent's decision *vide* the letter dated 16 July 2014 relied by the appellant was merely a reply to the appellant's letter dated 10 July 2014 and did not tantamount to a decision envisage by s. 145 of the LGA.

**[17]** In view of the aforesaid, encl. 1 which was filed on 13 August 2014 was definitely filed beyond the prescribed period stipulated in s. 145 of the LGA. Further, the payment of the rate too was not made within the prescribed timeline as stated in s. 145 of the LGA. There was clear non-compliance with the mandatory provisions of s. 145 of the LGA. This is fatal and had affected the jurisdiction of this court to hear the appeal.

**[18]** It had been held in the case of *Yee Seng Rubber Co Sdn Bhd v. The Commissioner of the Federal Capital of Kuala Lumpur* [1972] 1 LNS 177; [1972] 2 MLJ 21 at p. 22 that compliance of conditions for appeal is mandatory and not directory which goes to the jurisdiction of the court. Further, the court had also held that such conditions could not be waived. In the above case the court stated as follows:

> I hold that section 44(i) is a mandatory provision which goes to the jurisdiction of the Court. It is not directory and cannot be waived.

I further hold that the Court's jurisdiction to entertain appeals from the Board of the Federal Capital of Kuala Lumpur now known as the City of Kuala Lumpur was given by Statue - (Town Board Enactment Cap 137) - upon certain terms and conditions as prescribed by section 44(i) and that unless these terms or conditions are complied with the Court's jurisdiction does not arise.

**[19]** The same was also decided in *Wong Ngar v. Majlis Perbandaran Johor Bahru* [1995] 1 CLJ 412 where the court had stated that the 14 day timeline stated in s. 145 of LGA is mandatory and failure to comply with the mandatory requirement is fatal. The case of *Wong Ngar v. Majlis Perbandaran Johor Bahru* (*supra*) is also significant in the sense that the court had also resolved that ss. 142 and 145 of the LGA when read together would have the effect that there is no further objection to be made by the property owner with respect to the assessment made after the objection having been made under s. 142 of the LGA.

**[20]** The Federal Court had also ruled that there must be strict compliance with the mandatory provision of s. 145(2) of the LGA in terms of the filing the originating motion for purposes of appeal against the decision of the local authority (see *Datuk Bandar Kuala Lumpur v. Kuala Lumpur Golf and Country Club Bhd* [2005] 3 CLJ 901).

**Conclusions**

**[21]** Having considered the cause papers filed herein and having heard the arguments by the respective learned counsel of the respondent and the appellant and having given the matter a very careful and serious consideration, accordingly I accepted the preliminary objections raised by the respondent and struck out the appeal. After hearing a short submission on the issue of costs, I awarded the sum of RM5,000 as costs to the respondent.